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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

MICRON TECHNOLOGY, INC.,  
Plaintiff,  
v.  
UNITED MICROELECTRONICS  
CORPORATION, FUJIAN JINHUA  
INTEGRATED CIRCUIT CO., LTD., a  
DOES 1-10,  
Defendants.

Case No. 3:17-CV-06932-MMC

**PLAINTIFF MICRON TECHNOLOGY,  
INC.'S OPPOSITION TO DEFENDANT  
FUJIAN JINHUA INTEGRATED  
CIRCUIT CO., LTD.'S MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT FOR LACK OF  
PERSONAL JURISDICTION, FAILURE  
TO STATE A CLAIM AND FORUM  
NON CONVENIENS**

Date: April 19, 2019  
Time: 9:00 a.m.  
Judge: Hon. Maxine M. Chesney  
Courtroom: 7, 19th Floor

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1       **I. INTRODUCTION**

2                  This case involves a conspiracy between United Microelectronics Corporation (“UMC”),  
 3 Fujian Jinhua Integrated Circuit Co., Ltd. (“Jinhua”) and others to acquire and use Micron  
 4 Technology, Inc.’s (“Micron”) valuable trade secrets through acts performed in California, in the  
 5 United States and abroad. Micron—headquartered in Boise, Idaho and with substantial personnel,  
 6 sales and assets in the Northern District of California—is the owner of the stolen trade secrets at  
 7 issue. As one of the world’s leading producers of dynamic random access memory (“DRAM”),  
 8 Micron is a target of China’s efforts to acquire advanced semiconductor technologies from the  
 9 U.S.<sup>1</sup> Micron is a victim of foreign commercial espionage that has made international headlines.<sup>2</sup>

10                 The Court should deny Jinhua’s motion to dismiss asserting lack of personal jurisdiction,  
 11 failure to state a claim and forum non conveniens (Dkt. 168 (“Motion”)). First, Jinhua availed  
 12 itself of the U.S. by misappropriating trade secrets here, directly harming Micron. Second, Micron  
 13 has properly stated a claim for trade secret misappropriation and Racketeer Influenced and Corrupt  
 14 Organizations Act (“RICO”). Third, this forum is convenient, and Taiwan is not an adequate  
 15 forum.

16                 Jinhua’s legal argument is flawed and groundless. For example, Jinhua mischaracterizes  
 17 Micron’s First Amended Complaint (“FAC”) (Dkts. 140-3, 156) as only including a single event  
 18 of trade secret misappropriation, claiming that the Defend Trade Secrets Act (“DTSA”) was made  
 19 effective “after the alleged *event* in question” and that “the alleged *event* occurred outside  
 20 California.” Jinhua further states that “none of the acts of the alleged conspiracy” took place in  
 21 California. These are specious and misleading arguments, as there are a multitude of events in  
 22 California and the U.S., including: (i) that Jinhua traveled to this District to recruit engineers in  
 23 furtherance of its misappropriation of DRAM technology stolen from Micron; (ii) that Jinhua met  
 24 with and purchased equipment from vendors in this District to monetize trade secrets stolen from  
 25 Micron; and (iii) that Jinhua with UMC jointly filed 117 patent applications in the U.S., in which

26                 <sup>1</sup> Comm’n on Theft of Am. Intellectual Prop., Update to the IP Commission Report, at 15 (Feb.  
 27 2017), *available at* [\*http://ipcommission.org/report/IP\\_Commission\\_Report\\_Update\\_2017.pdf\*](http://ipcommission.org/report/IP_Commission_Report_Update_2017.pdf).

28                 <sup>2</sup> New York Times, “Inside a Heist of American Chip Designs, as China Bids for Tech Power”  
 (June 22, 2018), *available at* [\*https://www.nytimes.com/2018/06/22/technology/china-micron-chips-theft.html\*](https://www.nytimes.com/2018/06/22/technology/china-micron-chips-theft.html).

1 at least eleven filings constitute a separate act of misappropriation.

2       The Court should deny Jinhua's Motion in its entirety. *First*, there can be no doubt that  
 3 Jinhua is subject to this Court's personal jurisdiction. Jinhua exploited trade secrets stolen from  
 4 Micron by jointly filing for and obtaining over a hundred patents in the U.S., of which at least  
 5 eleven of the filings constitute acts of misappropriation in the U.S. as they *use and disclose*  
 6 Micron's trade secrets. Additionally, Jinhua availed itself of this Court's jurisdiction with its  
 7 October 2016 recruiting activities at the Chinese American Semiconductor Professional  
 8 Association ("CASPA") in this District, along with meetings and purchases from top U.S.  
 9 semiconductor equipment suppliers in this District, both alleged as acts in furtherance of the  
 10 UMC/Jinhua DRAM Project, using Micron's trade secrets.

11       *Second*, Jinhua for the first time has raised the issue of failure to state a claim. Micron's  
 12 FAC, however, methodically laid out facts supporting each element of Micron's trade secret  
 13 misappropriation and RICO claims, including that: Jinhua and UMC formed a global business  
 14 enterprise premised on UMC's theft of Micron's trade secret technology; Jinhua knew the  
 15 technology it would receive from UMC under their agreement would be stolen from Micron; and  
 16 Jinhua participated in acts of misappropriation, as well as acts in furtherance of misappropriation,  
 17 by sending a joint delegation to this District to recruit engineers and by jointly publishing patent  
 18 applications disclosing Micron's technology without Micron's consent. Micron also alleged that it  
 19 suffered economic damages as a result of Jinhua's actions.

20       *Finally*, and also for the first time, Jinhua raised the issue of forum non conveniens,  
 21 claiming that Taiwan would be an adequate forum. Taiwan, however, is not adequate, at least  
 22 because: it lacks discovery procedures; it does not have RICO claims; it cannot compel Jinhua's  
 23 attendance at trial in Taiwan; and it cannot enforce a judgment against Jinhua. And even if  
 24 Taiwan were an adequate forum, the forum non conveniens factors weigh heavily against Jinhua,  
 25 because, among other things: this District and the U.S. have a huge interest in this case; much of  
 26 the evidence and witnesses reside here<sup>3</sup>; Jinhua purposefully availed itself of the U.S. and its laws  
 27 with over 117 UMC/Jinhua Patent Filings, at least eleven constituting acts of trade secret

28       <sup>3</sup> Jinhua asserts more false statements, including that "not a single witness is in California," when  
 in fact there are over two dozen such witnesses.

1 misappropriation; Micron’s business is located in this District including management and directly-  
 2 affected business units; and two closely related government cases against Jinhua are pending  
 3 before this Court. Notably, a press release for the related criminal action states:

4       The theft of intellectual property on a continuing basis by nation-state actors is  
 5       an even more damaging affront to the rule of law. We in the Northern District  
 6       of California, one of the world’s great centers of intellectual property  
 7       development, will continue to lead the fight to protect U.S. innovation from  
 8       criminal misappropriation, whether motivated by personal greed or national  
 9       economic ambition.<sup>4</sup>

10      The same principles support holding wrongdoers accountable in civil cases in this District.

11      Jinhua’s Motion should be denied.

## 12      **II. PROCEDURAL HISTORY AND BACKGROUND**

13      On December 5, 2017, Micron filed suit against UMC and Jinhua for trade secret  
 14      misappropriation and RICO. (Dkt. 1.) UMC filed a motion to dismiss for lack of jurisdiction,  
 15      resulting in jurisdictional discovery. (Dkts. 27, 53.) Also, during this time, Micron discovered  
 16      that DRAM-related patents disclosing Micron’s trade secrets were publishing and were assigned to  
 17      UMC and Jinhua (“UMC/Jinhua Patent Filings”). Jinhua filed a first motion to dismiss for lack of  
 18      personal jurisdiction and insufficient service of process, which Micron opposed. (Dkts. 106, 116.)  
 19      Micron filed a motion for alternative service, which was granted. (Dkts. 117, 136.) On January  
 20      18, 2019, the Court granted Jinhua’s motion to dismiss with leave for Micron to amend its  
 21      complaint. (Dkt. 139.) In its Order, the Court recognized that while a U.S. patent applicant is  
 22      deemed to have purposefully directed its activities at the U.S., Micron had not made those  
 23      allegations in its complaint. (*Id.* at 4:10-23.) The Court also found that Micron’s complaint did  
 24      not adequately allege meetings with equipment vendors and recruiting efforts in this District. (*Id.*  
 25      at 5:1-6:10.) Micron learned additional facts during jurisdictional discovery.

26      In response, Micron filed its FAC, following the Court’s guidance. (*See* Dkt. 139.) In its  
 27      FAC, Micron alleged facts of UMC’s misappropriation of thousands of files detailing Micron’s  
 28      trade secrets, (FAC ¶¶ 4, 22, 47, 72, 74), through both the knowing downloads from U.S. servers

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29      <sup>4</sup> Declaration of Douglas L. Clark in Support of Micron’s Opposition (“Clark Decl.”) Ex. 1 (Press  
 30      Release of the U.S. Department of Justice).

1 (id. ¶¶ 47-51) and at least 117 UMC/Jinhua Patent Filings, which filings may constitute  
 2 independent acts of misappropriation (id. ¶ 4). Also, Jinhua engaged in acts in furtherance of its  
 3 misappropriation by recruiting engineers and meeting with vendors and purchasing equipment in  
 4 this District. (Id. ¶¶ 23-45, 83-84.) Now, Jinhua filed yet another motion to dismiss, this time on  
 5 three grounds: personal jurisdiction, failure to state a claim and forum non conveniens. Each fails.

6 **III. THIS COURT HAS PERSONAL JURISDICTION OVER JINHUA**

7 Jinhua is subject to the Court's specific personal jurisdiction if: (1) Jinhua purposefully  
 8 directed activities at the forum; (2) Micron's claims relate to the forum-related activities; and (3)  
 9 the exercise of jurisdiction is reasonable. *See DEX Sys., Inc. v. Deutsche Post AG*, 727 F. App'x  
 10 276, 277 (9th Cir. 2018) (citing *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068-69  
 11 (9th Cir. 2017)). Under that standard, "purposeful direction" requires that the defendant allegedly  
 12 has "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that  
 13 the defendant knows is likely to be suffered in the forum state." *Id.* (Quotations omitted.)

14 Because Micron asserts federal claims under the DTSA and Civil RICO, Federal Rule of  
 15 Civil Procedure ("Rule") 4(k)(2) expands the focus of the minimum-contacts analysis. Where, as  
 16 here, Jinhua identifies no U.S. state in which it would be amenable to suit, Rule 4(k)(2) provides a  
 17 federal long-arm statute that allows Micron to rely on Jinhua's contacts not only with the forum  
 18 state, but with the U.S. as a whole. *See Holland Am. Line Inc. v. Wärtsilä N. Am.*, 485 F.3d 450,  
 19 461-62 (9th Cir. 2007) (holding that a court may consider defendant's "contacts with the nation as  
 20 a whole" when defendant does not identify a state for jurisdiction). Under Rule 4(k)(2),  
 21 jurisdiction attaches as long as the defendant's aggregate contacts with the U.S. support personal  
 22 jurisdiction. *Id.* at 461.<sup>5</sup> Moreover, as applied to Micron's claim under the DTSA, Rule 4(k)(2)  
 23 subjects Jinhua to the Court's jurisdiction if it committed some act of misappropriation—or "an act  
 24 in furtherance of" its misappropriation—in the U.S. 18 U.S.C. § 1837(2).

25 Thus, personal jurisdiction over Jinhua is proper if Jinhua expressly aimed intentional acts  
 26 at the U.S. and caused Micron injury here.<sup>6</sup> Because Micron is headquartered in Idaho, owns all of

27 <sup>5</sup> To escape the application of Rule 4(k)(2), the defendant must stipulate that personal jurisdiction  
 would be proper in another U.S. district court. (*Id.*) Jinhua has not done so.

28 <sup>6</sup> The plaintiff, however, need not have suffered the "brunt" of its harm in the forum. *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1207 (9th Cir. 2006) (en banc).

1 the stolen trade secrets, and conducts R&D activities there, its injuries have clearly been felt in the  
2 U.S. *See Dole Food Co. v. Watts*, 303 F.3d 1104, 1113 (9th Cir. 2002) (noting that a “corporation  
3 can suffer economic harm both where the bad acts occurred and where the corporation has its  
4 principal place of business”). Moreover, even the government has recognized Micron’s injury in  
5 this exact case, stating that “[i]f China acquires an American company’s most important  
6 technology – the very technology that makes it the leader in a field – that company will suffer  
7 severe losses, and our national security could even be impacted.” (Clark Decl. Ex. 1.) The crucial  
8 inquiry is whether Jinhua expressly aimed its misconduct here. As shown below, it did.<sup>7</sup>

Finally, the Court weighs reasonableness (i.e., fair play and substantial justice) using seven factors, which favor Micron. *Harris Rutsky*, 328 F.3d at 1132 (citations omitted). Under these controlling standards, Micron’s FAC establishes that Jinhua purposefully directed its actions at the U.S. (including California), Micron’s claims arise out of, and relate to, those activities, and jurisdiction is fair.

**A. Under Rule 4(k)(2), Jinhua's Aggregate Contacts with the U.S. Establish Jurisdiction.**

16 Rule 4(k)(2) governs the jurisdictional analysis of Micron’s federal claims under RICO and  
17 the DTSA. Where Jinhua identifies no U.S. state in which it would be amenable to suit, Rule  
18 4(k)(2) allows Micron to rely on Jinhua’s minimum contacts not only with the forum state, but  
19 with the U.S. as a whole.<sup>8</sup> Jinhua’s U.S. contacts establish personal jurisdiction under Rule  
20 4(k)(2). First, Jinhua has been filing U.S. patent applications incorporating trade secrets stolen  
21 from Micron at an alarming rate, and Micron has pled that at least eleven patent filings constitute  
22 separate acts of trade secret misappropriation. (FAC ¶¶ 4, 92-98.) Second, UMC and Jinhua sent  
23 a large delegation to this District seeking DRAM engineers in furtherance of their trade secret  
24 misappropriation. (FAC ¶¶ 23-36, 82.) Third, UMC and Jinhua interviewed, conducted meetings

<sup>7</sup> Unless directly controverted, Micron’s “version of the facts is taken as true, and ‘conflicts between the facts contained in the parties’ affidavits must be resolved in [plaintiff’s] favor. . . .’” *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003) (quoting *Doe, I v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001)).

<sup>8</sup> Interestingly, Jinhua—attempting to avoid Micron’s arguments under Rule 4(k)(2)—leads with a quote from the *Holland* case about the supposed rarity of Rule 4(k)(2) cases, but, of course, *Holland* is a 12-year old case, and in actuality to date over 800 cases have cited to Rule 4(k)(2). (See Clark Decl. ¶ 2.)

1 with, and purchased equipment from major equipment vendors located in this District. (FAC  
 2 ¶¶ 37-45, 83-84.) Finally, Micron has been harmed in this District, as well as elsewhere in the  
 3 U.S. (FAC ¶¶ 62, 126, 134, 141.)

4       **1. Jinhua's Patent Applications in the U.S. Are Sufficient to**  
 5           **Establish Jurisdiction.**

6       Jinhua purposefully directed its misconduct at the U.S. by seeking and obtaining U.S.  
 7 patents based on technology stolen from Micron, and Micron's claim for trade secret  
 8 misappropriation directly arises from many of the UMC/Jinhua Patent Filings. (FAC ¶¶ 4, 95.)  
 9 Courts hold that the filing of a U.S. patent application based on another's trade secrets is an act of  
 10 misappropriation in the U.S. *See Informatics Applications Grp., Inc. v. Shkolnikov*, 836 F. Supp.  
 11 2d 400, 423 (E.D. Va. 2011); *accord Repap Enters. Inc. v. Kamyr Inc.*, No. 92-5701, 1993 WL  
 12 322881, at \*8 (E.D. Pa. June 8, 1993) (including trade secrets in patent applications is  
 13 misappropriation); *Altavion, Inc. v. Konica Minolta Sys. Lab. Inc.*, 226 Cal. App. 4th 26, 65-66  
 14 (2014) (same). Moreover, applying Rule 4(k)(2), “[t]he Federal Circuit has determined that the  
 15 filing of a patent application . . . is a ‘purposeful’ activity directed at ‘parties in the United States,’  
 16 and is sufficient to establish ‘minimum contacts’ with the United States and ‘satisfy due process.’”  
 17 *Lismont v. Alexander Binzel Corp.*, No. 2:12cv592, 2013 WL 6095461, at \*7 (E.D. Va. Nov. 18,  
 18 2013) (quoting *Touchcom, Inc. v. Bereskin & Parr*, 574 F.3d 1403, 1416 (Fed. Cir. 2009)). As  
 19 such, “the filing of the U.S. patent application in this case qualifies as a ‘purposefully directed’  
 20 activity toward, and a ‘minimum contact’ with, the United States.” *Id.* Here, Jinhua purposefully  
 21 directed activity to the U.S. through its at least 117 UMC/Jinhua Patent Filings. (FAC ¶¶ 4, 92.)

22       Micron's claim for trade secret misappropriation also arises out of and directly relates to  
 23 these UMC/Jinhua Patent Filings. *See Touchcom, Inc.*, 574 F.3d at 1416-17; *see also Am. Wave*  
 24 *Machines, Inc. v. Surf Lagoons, Inc.*, No. 13-CV-3204-CAB NLS, 2014 WL 10475281, at \*8  
 25 (S.D. Cal. Nov. 12, 2014). Starting in September 2016, and publishing in late 2017, UMC and  
 26 Jinhua have applied for and obtained patents based on Micron's trade secrets. (FAC ¶ 92.) All  
 27 were filed after UMC improperly acquired Micron's trade secrets.<sup>9</sup> (FAC ¶ 93.) Many of the

28 <sup>9</sup> Leading up to the filing dates of each of the UMC/Jinhua Patent Filings, UMC was in possession  
 of more than 20,000 files that Ho had stolen from Micron. (FAC ¶¶ 16, 54.) UMC was also in

1 UMC/Jinhua Patent Filings describe the same technologies as described in trade secrets stolen  
 2 from Micron. (*Id.*) Given the short period of time from when UMC and Jinhua commenced  
 3 working on the UMC/Jinhua DRAM Project and the filing of patents, the Defendants did not and  
 4 could not have independently developed the DRAM in the patent applications. (*Id.*; FAC ¶ 12.)

5 Specifically, Micron alleged that at least eleven of the UMC/Jinhua Patent Filings  
 6 “constitute[e] improper use and disclosure of Micron’s trade secrets.” (FAC ¶¶ 4, 95.) “But for”  
 7 these eleven filings, these separate acts of misappropriation would not exist, harming Micron.  
 8 (FAC ¶¶ 62, 126, 134, 141.) Micron further alleged the actual trade secret document title in  
 9 UMC’s possession along with page number. (FAC ¶ 95.) Micron finally alleged that “[b]y using  
 10 and disclosing Micron’s trade secrets in the UMC/Jinhua Patent Filings as set forth herein, UMC  
 11 and Jinhua engaged in acts of misappropriation and acts in furtherance of their misappropriation  
 12 from Micron in the United States and in this District.” (FAC ¶ 4.) Additionally, the vast majority  
 13 of the UMC/Jinhua Patent Filings name former Micron engineers as inventors, including for  
 14 example co-conspirator Ho (inventor on at least 25 UMC/Jinhua Patent Filings), co-conspirator  
 15 Wang (inventor on at least 5), and Neil Lee (named inventor on at least 33). (FAC ¶¶ 4, 16-17,  
 16 94.) As of the filing of the FAC, former Micron employees were named inventors on as many as  
 17 110 of the 117 UMC/Jinhua Patent Filings—almost 95%. (FAC ¶ 94.) Micron’s claim for trade  
 18 secret misappropriation arises out of and relates to the UMC/Jinhua Patent Filings, because the  
 19 filings constitute the improper use and disclosure of Micron’s trade secrets. *Informatics*, 836 F.  
 20 Supp. 2d at 423. And contrary to what Jinhua argued, Micron was harmed in this District, as well  
 21 as elsewhere in the U.S. (FAC ¶¶ 62, 126, 134, 141.)

22 Jinhua’s Motion makes several erroneous arguments and statements. First, Jinhua  
 23 mischaracterizes the case law by saying that under Rule 4(k)(2), “nationwide contacts” must be  
 24 “significant,” but the case to which Jinhua cited does not support this proposition. (Jinhua’s  
 25 Motion at 10:1-4 (citing *Mocha Mill, Inc. v. Port of Mokha, Inc.*, No. 18-CV-02539-HSG, 2019  
 26 WL 1048252, at \*6 (N.D. Cal. Mar. 5, 2019)). Instead, the *Mocha Mill* court found that Rule

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27 possession of those files downloaded by Wang, including many from U.S. servers. (FAC ¶ 47.)  
 28 UMC delivered much of this technology to Jinhua to enable it to illegally and unfairly compete in  
 the DRAM business. (FAC ¶ 90; *see also* FAC ¶¶ 11, 33, 67.)

1 4(k)(2) did not apply only because “Plaintiffs pleaded no U.S. contacts outside of California.”  
 2 *Mocha Mill*, 2019 WL 1048252, at \*6. Here, Micron pled plenty of U.S. contacts both inside and  
 3 outside of California. Second, Jinhua makes the statement—unsupported by case law or logic—  
 4 that Micron’s argument “would subject any foreign patent owner to personal jurisdiction in any  
 5 district of the United States.” (Jinhua’s Motion 10:4-5.) Micron’s argument, however, is isolated  
 6 to the scenario where a foreign patent owner files patents in the U.S. that use or disclose another’s  
 7 trade secrets, resulting in jurisdiction. Third, Jinhua misreads the Court’s Order (Dkt. 139),  
 8 interpreting it to mean that the Court has already addressed and rejected the issue of patent filings.  
 9 (Jinhua’s Motion at 10:6-8.) But in actuality, the Court acknowledged that patent filings may be  
 10 deemed purposeful availment,<sup>10</sup> indicated that Micron did not plead them *in its complaint*, and  
 11 gave Micron the opportunity to properly plead the patent filings, which it did.<sup>11</sup> (Dkt. 139.)

12 Jinhua’s patent filings in the U.S. constitute purposeful availment, and Micron’s claim for  
 13 trade secret misappropriation arises out of those filings. These facts alone warrant a finding of  
 14 personal jurisdiction under Rule 4(k)(2).

15 **2. Jinhua’s Delegation to Recruit Engineers Also Supports Jurisdiction.**

16 Jinhua’s delegation (organized by UMC) to Silicon Valley in October 2016 demonstrates  
 17 substantial steps in furtherance of the misappropriation plot to recruit engineers for Jinhua. Trade  
 18 secret misappropriation can be sufficiently pled by alleging use of stolen information to recruit  
 19 employees and customers. *Labor Ready, Inc. v. Williams Staffing, LLC*, 149 F. Supp. 2d 398,  
 20 411–12 (N.D. Ill. 2001); *Synthes (U.S.A.) v. G.M. Dos Reis Jr. Ind. Com de Equip. Medico*, 563  
 21 F.3d 1285, 1290 (Fed. Cir. 2009) (defendant’s meeting with U.S. companies at trade show  
 22 constituted “purposeful direction” at the forum to support personal jurisdiction).

23 <sup>10</sup> In the criminal proceeding, the Court said that an application for U.S. patents “is pretty big  
 24 availment of one’s resources in the Northern District or in the United States, I think.” (Clark Decl.  
 Ex. 7.)

25 <sup>11</sup> Jinhua makes three other arguments. It argues that Micron failed to state the role of Jinhua in the  
 26 patent prosecution process, (Jinhua’s Motion at 10 n. 5), but Micron did, including Jinhua’s Power  
 27 of Attorney to enable U.S. Patent Agents to prosecute the patent and the executed assignment  
 28 documents to Jinhua. (FAC ¶ 97.) Jinhua claims that none of the causes of action in the FAC  
 refer to the UMC/Jinhua Patent Filings, which is false, since all the causes of action incorporate  
 the patent filings by reference. (*See, e.g.*, FAC ¶¶ 100-101.) Finally, Jinhua states that the FAC  
 does not show that Jinhua “purposefully directed” its U.S. patent filings in the U.S. by alleging  
 injury, which is also untrue, because Micron alleged injury. (FAC ¶¶ 62, 116-18, 146.)

As late as 2016, Jinhua had no engineers with DRAM experience (FAC ¶ 12), and UMC was not in the DRAM business (FAC ¶ 13). UMC and Jinhua needed engineering talent to deploy the stolen technology. (FAC ¶ 80.) As such, in June 2016, Jinhua posted material on the U.S.-based organization CASPA’s website advertising numerous Jinhua job openings in a variety of DRAM positions, including process and design R&D, manufacturing, DRAM yield and process optimization, and DRAM testing. (FAC ¶ 80.) In October 2016, UMC and Jinhua sent a delegation to Silicon Valley, including seven UMC and Jinhua executives, led personally by Chen, to recruit experienced semiconductor engineers from the U.S. for the UMC/Jinhua DRAM Project. (*Id.*) The job fair was hosted by CASPA in this District and sponsored by Jinhua. (*Id.*) Additionally, Jinhua held a separate recruiting event to actively recruit potential hires for its DRAM project. (FAC ¶¶ 24-25.) Jinhua recruited DRAM engineers at CASPA with UMC’s assistance. (FAC ¶ 27.) UMC and Jinhua jointly prepared materials to present at CASPA, including milestone and technology roadmap information based off trade secret information stolen from Micron. (FAC ¶¶ 24, 27.) Approximately 60-80 engineers attended the CASPA event, and *on behalf of Jinhua*, UMC interviewed roughly 20 of them, many residing in Northern California. (FAC ¶ 80.) Jinhua’s and UMC’s efforts to recruit for the DRAM project, relying on roadmaps and assurances of technical capabilities based on Micron’s stolen technology, constituted acts in furtherance of UMC’s misappropriation and support the Court’s jurisdiction. (FAC ¶¶ 24, 82.)

**3. Jinhua Visited Bay Area Vendors and Purchased Tools for Manufacturing Products to Use the Stolen Technology.**

Nor was UMC’s week-long trip to Silicon Valley limited to recruiting; it included equipment vendor meetings. Courts have found that meetings with companies constitute “purposeful direction” to a forum and support personal jurisdiction. *See Synthes*, 563 F.3d at 1290; *see also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985). Here, the UMC-Jinhua delegation spent several days visiting leading suppliers of semiconductor equipment in this District. (FAC ¶ 83.) The suppliers included Applied Materials, Inc. (“Applied Materials”), KLA-Tencor (“KLA”), and Lam Research Corporation (“LAM”), all based in this District. (FAC ¶ 38.) With Micron’s confidential DRAM technology in hand while visiting the equipment vendors,

1 (FAC ¶ 37), UMC and Jinhua knew precisely what equipment to procure.

2 In fact at the time of meeting with the vendors, UMC/Jinhua had already placed orders for  
 3 DRAM manufacturing equipment in this District and vendors had performed tool demonstration  
 4 work “for the DRAM project, all in furtherance of exploiting Micron’s stolen DRAM technology.”  
 5 (FAC ¶¶ 42, 83.) One local vendor had even provided products in support of the UMC/Jinhua  
 6 DRAM Project prior to these meetings. (See FAC ¶ 45.) Each of the local vendors contributed to  
 7 the sale and export of the very equipment UMC and Jinhua would use to exploit technology stolen  
 8 from Micron. (FAC ¶¶ 46, 84.) Like recruiting, Jinhua’s business meetings with crucial suppliers  
 9 in this District utilized stolen technology and were acts in furtherance of its misappropriation,  
 10 supporting the Court’s jurisdiction (FAC ¶¶ 83, 84.). *See Synthes*, 563 F.3d at 1290.

11 Finally, Micron also alleges that the vendor meetings were *acts in furtherance* of an even  
 12 more elaborate use of Micron’s technology: the full commercialization of the stolen technology.  
 13 (FAC ¶¶ 80-84). As such, contrary to Jinhua’s assertion, Jinhua’s recruiting efforts and visits with  
 14 equipment vendors are “but for” causes of Micron’s claims because they constitute acts of  
 15 misappropriation and acts in furtherance (an element required under 18 U.S.C. § 1837(2)) of  
 16 misappropriation *in the United States*.

17 **B. Jinhua Has Failed to Satisfy Its Heavy Burden to Show That Exercise  
 18 of the Court’s Jurisdiction Would Be Unreasonable.**

19 Because the minimum contacts portion of the jurisdictional analysis has been met, Jinhua  
 20 bears the heavy burden of showing that the Court’s exercise of jurisdiction would nevertheless be  
 21 unreasonable under the seven factors set forth by the Ninth Circuit. *Harris Rutsky*, 328 F.3d at  
 22 1132. These factors must convincingly tilt against the exercise of jurisdiction. *Id.* at 1134 (citing  
 23 *Roth v. Garcia Marquez*, 942 F.2d 617, 625 (9th Cir. 1991)); *see also Dole*, 303 F.3d at 1117 (“A  
 24 number of our cases emphasize the heavy burden on both domestic and foreign defendants in  
 25 proving a ‘compelling case’ of unreasonableness to defeat jurisdiction.”). “For the Court’s  
 26 exercise of jurisdiction to be unreasonable, the burden of defending in California must be ‘so  
 27 gravely difficult and inconvenient’ that it violates due process.” *Enriquez v. Interstate Grp., LLC*,  
 28 No. 11-CV-05155 YGR, 2012 WL 3800801, at \*6 (N.D. Cal. Aug. 31, 2012). Jinhua cannot

1 present a “compelling case” that the Court should decline jurisdiction.

2       **(1) Extent of Defendant’s Purposeful Interjection into the Forum.** This factor  
 3 typically favors jurisdiction even when “contacts with the forum state are nevertheless attenuated.”  
 4 *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1488 (9th Cir. 1993) (defendants’ only contact  
 5 with forum state was writing an article alleged to have targeted a California resident). Some Ninth  
 6 Circuit cases even say the degree of intrusion is irrelevant once minimum contacts has been met.  
 7 See *Corporate Invest. Business Brokers v. Melcher*, 824 F.2d 786, 787 (9th Cir. 1987). Here,  
 8 however, the degree of intrusion—into California and the U.S. as a whole—is not attenuated. As  
 9 Micron has shown, Jinhua’s presence includes 117 U.S. patent filings many shown to incorporate  
 10 trade secrets stolen from Micron, (Dkt. 75-107 ¶¶ 13, 31, 38, 39, 46, 52, 59, 61; Dkt. 116-23 ¶¶ 5-  
 11 7, 9; FAC ¶¶ 4, 95), recruiting in this District, and meetings with and purchases from equipment  
 12 vendors in this District. (FAC ¶¶ 23-45, 83-84.) Further, Jinhua knowingly misappropriated trade  
 13 secrets and conspired against a company headquartered in Idaho, incorporated in Delaware, and  
 14 with a facility in this District that employs roughly 450 professionals including the executive  
 15 leadership of the company and the business units that market Micron’s DRAM products. (Dkt. 42-  
 16 1 (“Myers Decl.”) ¶¶ 3-4.)

17       **(2) Burden on Defendant of Defending in the Forum.** Any burden to Jinhua of  
 18 defending this action in California is eclipsed by the burden to Micron if the case were brought in  
 19 Taiwan. *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1199 (9th Cir. 1988) (finding for plaintiff  
 20 after taking into account the balance of burdens between both parties, among other factors) (citing  
 21 *Brand v. Menlove Dodge*, 796 F.2d 1070, 1075 (9th Cir. 1986)). To litigate in Taiwan, Micron  
 22 would have to contend with a court system that lacks discovery proceedings, does not have jury  
 23 trials, cannot compel Taiwanese defendants to produce evidence, cannot compel Jinhua to attend  
 24 trial or produce documents from China,<sup>12</sup> lacks an equivalent claim for RICO, and cannot enforce  
 25 judgment against Jinhua. (Declaration of Po-Chien Chen (“Chen Decl.”) ¶¶ 6, 9, 14, 15.)

26  
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<sup>12</sup> While Jinhua claims that Taiwan can compel attendance of Jinhua’s witnesses, it cannot. (Chen  
 28 Decl. ¶ 6.) At most, Taiwanese courts may serve subpoenas, but they cannot compel compliance. (*Id.*) Moreover, since Jinhua is a state-owned company, it is even more unlikely that the Chinese  
 government would hand over documents or witnesses. (See *id.* ¶ 8.)

1 Moreover, “modern advances in communications and transportation have significantly reduced the  
 2 burden of litigating in another country.” *Sinatra*, 854 F.2d at 1199.

3       **(3) Extent of Conflict with Sovereignty of Defendant’s State.** “Although this factor is  
 4 important, it is not controlling.” *Harris Rutsky*, 328 F.3d at 1133 (citing *Gates Learjet Corp. v.  
 5 Jensen*, 743 F.2d 1325, 1333 (9th Cir. 1984) (“If [this factor were] given controlling weight, it  
 6 would always prevent suit against a foreign national in a United States court.”)). Here, Jinhua is  
 7 not even arguing for jurisdiction in China, but rather Taiwan. Therefore, the sovereignty of  
 8 Jinhua’s state is irrelevant. Moreover, the U.S. has its own sovereignty to protect. The U.S. has  
 9 strong policy reasons to protect its companies from trade secret theft from China, and in making  
 10 Micron whole. H.R. Rep. No. 114-529 at 3-4 (2016). Also, the alleged actions in this case include  
 11 117 UMC/Jinhua Patent Filings, each of which may constitute a separate act of misappropriation  
 12 in the U.S., but not in Taiwan.

13       **(4) Forum State’s Interest in Adjudicating the Dispute.** Applying Rule 4(k)(2), and  
 14 considering the interests of the U.S., the legislative history of the DTSA leaves no doubt that  
 15 Congress viewed it as an imperative public interest to provide U.S. technology companies a  
 16 federal, private right of action to defend against misappropriation taking place abroad. Explaining  
 17 the rationale behind the DTSA’s civil-action provision, Congress recognized “the ‘significant and  
 18 growing threat presented by criminals who engage in espionage on behalf of foreign adversaries  
 19 and competitors.’ . . . ‘And the EEA, as a criminal statute, is not suited to making whole the  
 20 victims of misappropriation.’” H.R. Rep. No. 114-529 at 3-4 (citations omitted). In short,  
 21 Congress enacted the DTSA to promote the national interest in enlisting civil enforcement against  
 22 foreign violators of trade secret laws. Micron further incorporates herein the forum non  
 23 conveniens factors for public interest factors (1)-(5) *infra* Section V.B.

24       **(5) Most Efficient Judicial Resolution of the Controversy.** While typically turning on  
 25 which forum will provide the litigants with better access to proof, “this factor is ‘no longer  
 26 weighed heavily given the modern advances in communication and transportation’” and, for that  
 27 reason, the Ninth Circuit has sustained the reasonableness of personal jurisdiction even where  
 28 almost all of the evidence and potential witnesses reside outside the United States. *See Harris*

1        *Rutsky*, 328 F.3d at 1133 (quoting *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1323 (9th Cir.  
 2        1998)). Here, however, there is a significant amount of evidence and witnesses in this District.  
 3        (See public interest factor (3) *infra* Section V.B.) Moreover, whatever the physical location of the  
 4        documents or witnesses, Taiwan's lack of discovery proceedings and methods to compel a  
 5        defendant—even for a Taiwanese defendant—to produce evidence refutes any argument that a  
 6        proceeding in Taiwan could provide better access to proof. (Chen Decl. ¶ 9.)

7                **(6) Forum's Importance to Plaintiff.** Proceeding in this forum is important to Micron.  
 8        First, Micron maintains two DRAM-related business units (directly affected in this case) and  
 9        accounting for roughly 64 percent of Micron's sales in Fiscal Year 2017 in this District. (Myers  
 10      Decl. ¶ 4.) Second, much of Micron's corporate leadership is here, including its President and  
 11      CEO and the heads of three of Micron's four business units. (*Id.*) Finally, Micron incorporates  
 12      the forum non conveniens factors for private interest (1)-(3) *infra* Section V.B.

13                **(7) Existence of an Alternative Forum.** While Jinhua contends that Taiwan is an  
 14      adequate forum, it is not. Micron incorporates *infra* Section V.A, demonstrating that Taiwan is  
 15      not an adequate forum, and even if it was, the other factors for forum non conveniens weigh in  
 16      favor of this District. In particular, *infra* Section V.B, (private interest (1)-(6); public interest (1))  
 17      demonstrate the importance of this forum over Taiwan.

18        These factors favor Micron, and Jinhua has failed to meet its burden of unreasonableness.

#### 19      **IV. MICRON'S PLEADING STATES A CLAIM AND SATISFIES FRCP 8(A)(2)**

20        Rule 8(a)(2) requires that a complaint include “a short and plain statement of the claim  
 21      showing that the pleader is entitled to relief.” A complaint that fails to meet this standard may be  
 22      dismissed pursuant to Rule 12(b)(6). The United States Supreme Court has held that Rule 8(a)  
 23      requires a plaintiff to plead “enough facts to state a claim to relief that is plausible on its face.”  
 24      *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when  
 25      the plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
 26      defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The  
 27      plausibility standard is not akin to a probability requirement, but it asks for more than a sheer  
 28      possibility that a defendant has acted unlawfully.” *Id.* (quotations omitted). For purposes of ruling

on a Rule 12(b)(6) motion, the Court “accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

Micron has pled sufficient facts to show that Jinhua and UMC conspired to misappropriate Micron’s trade secrets in violation of the DTSA, California Uniform Trade Secrets Act (“CUTSA”), and RICO. *See Bell Atlantic*, 550 U.S. at 570; *Ashcroft*, 556 U.S. 662 at 678; Fed. R. Civ. P. 8(a)(2). Under both the DTSA and the CUTSA, “misappropriation” means either (1) the “[a]cquisition of a trade secret by another person who knows or has reason to know that the trade secret was acquired by improper means;” or (2) the “[d]isclosure or use of a trade secret of another without express or implied consent.”<sup>13</sup> 18 U.S.C. § 1839(5); Cal. Civ. Code § 3426.1(b).

Misappropriation of trade secrets qualifies as a “racketeering activity” sufficient to state a claim under RICO. *See* 18 U.S.C. § 1961(1)(B) (identifying theft of trade secrets among the enumerated crimes qualifying as “racketeering activity”). The RICO statute, 18 U.S.C. § 1962(c), requires a plaintiff to prove that each defendant participated in (1) the conduct of (2) an enterprise that affects interstate commerce (3) through a pattern (4) of racketeering activity which (5) proximately harmed the victim. *See Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014). Thus, to state a claim under all three of these statutes, Micron need only plead that Jinhua participated in the conduct of an enterprise that affects interstate commerce to steal Micron’s trade secrets, and that Micron was proximately harmed. *See id.* Micron alleges facts supporting each of these elements.

First, Micron pleads that Jinhua and UMC entered a business arrangement that relied on UMC's theft of Micron's trade secrets. Micron pleads that Jinhua and UMC agreed to undertake the UMC/Jinhua DRAM Project, a global business enterprise under which UMC would provide Jinhua with advanced DRAM technology in exchange for \$300 million in R&D equipment, \$400 million in development fees, co-ownership of the resulting technology, and the potential for additional future licensing revenues. (FAC ¶¶ 67-68.) Micron pleads that at the time Jinhua

<sup>13</sup> Jinhua does not challenge Micron's allegations related to the existence, sufficiency and ownership of the trade secrets at issue. (See generally Motion at 12-15.)

1 entered this agreement, it knew that “UMC did not possess the technological resources to develop  
 2 the promised technology by itself, and understood that the technology would be based  
 3 substantially on Micron’s DRAM designs and processes.” (*Id.* ¶ 68.) Micron further pleads that  
 4 during a public groundbreaking event at the outset of the project, Jinhua “acknowledged that its  
 5 partner, UMC, lacked the technical wherewithal for the project and would have to ‘acquire’ the  
 6 necessary talent from other companies in Taiwan and elsewhere.” (*Id.* ¶ 76.) In fact, UMC and  
 7 the founders of Jinhua developed and set in motion a plan for UMC to recruit key personnel from  
 8 Micron’s Taiwanese affiliate, Micron Memory Taiwan Co., Ltd (“Micron-Taiwan”) and conspired  
 9 together to induce former Micron-Taiwan employees to misappropriate trade secrets. (*Id.* ¶ 3.)  
 10 Moreover, UMC and Jinhua jointly filed patents in the U.S. containing Micron’s trade secrets,  
 11 conduct affecting interstate commerce. (*Id.* ¶¶ 92-95.) These facts demonstrate the conduct of an  
 12 enterprise between UMC and Jinhua affecting interstate commerce.

13 Second, UMC’s and Jinhua’s conduct constitutes a pattern of racketeering activity based  
 14 on repeated instances of misappropriation. Micron pleads that Jinhua jointly filed over a hundred  
 15 U.S. patents with UMC, and at least eleven were specifically alleged to use and disclose Micron’s  
 16 trade secrets. (*Id.* ¶¶ 92-95.) The eleven patent filings alone show a pattern of racketeering  
 17 activity, because each constitutes a new act of trade secret misappropriation. *See* 18 U.S.C. §  
 18 1961(1)(B). Also, contrary to Jinhua’s assertions, (Motion 15:1-5), Micron did, in fact, show that  
 19 Jinhua acquired trade secrets, (FAC ¶ 95), knew that the information was a trade secret acquired  
 20 through improper means, (FAC ¶¶ 68, 76), and that Jinhua benefitted from such use or disclosure  
 21 (FAC ¶¶ 4, 7, 118).

22 Finally, Micron pleads damages arising from Jinhua’s wrongful conduct. (FAC ¶ 7, 62,  
 23 116-18, 146.) The filing of patents constitutes misappropriation, (*Id.* ¶¶ 4, 92-95), and these  
 24 filings threaten Micron from using its own trade secrets, which is a concrete financial loss. *Attia v.*  
 25 *Google LLC*, No. 17-CV-06037-BLF, 2018 WL 2971049, at \*14 (N.D. Cal. June 13, 2018)  
 26 (finding plaintiffs “sufficiently alleged concrete financial loss at the pleading stage through  
 27 Plaintiffs’ specific lost opportunities to use and profit from EA technology after Google patented  
 28 the alleged trade secrets in 2012”). These misappropriations have caused and will continue to

1 cause Micron irreparable and substantial injury, as well as give UMC and Jinhua improper  
 2 advantages, positions, and rights in the marketplace to Micron's detriment.<sup>14</sup> (FAC ¶¶ 7, 116-  
 3 118.) Having alleged facts sufficient to show that Jinhua participated in the conduct of an  
 4 enterprise that affects interstate commerce to steal Micron's trade secrets, and that Micron was  
 5 proximately harmed, Micron has adequately stated claims under DTSA, CUTSA and RICO. Rule  
 6 8(a) does not require more.

7       Jinhua has no basis to claim that Micron must meet Rule 9(b)'s heightened pleading  
 8 standard. Rule 9(b) applies when a party alleges fraud. But fraud is not an element of any of  
 9 Micron's claims. In "a case where fraud is not an essential element of a claim, only allegations  
 10 ('averments') of fraudulent conduct must satisfy the heightened pleading requirements of Rule  
 11 9(b). Allegations of non-fraudulent conduct need satisfy only the ordinary notice pleading  
 12 standards of Rule 8(a)." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003).  
 13 Given that fraud is not an element of any of Micron's claims, only specific factual averments of  
 14 fraud would be subject to Rule 9(b). Here, Jinhua does not point to any specific allegations of  
 15 fraud, but merely asserts that Micron's allegations "touch on fraud." (Motion at 22.)

16       Jinhua's other attempts to avoid the application of the DTSA, CUTSA, and RICO are  
 17 similarly unavailing. Jinhua is not correct that its wrongful conduct is immune from prosecution  
 18 under the DTSA simply by virtue of beginning in 2015, before enactment of the DTSA. The  
 19 DTSA applies to "misappropriations that occur or *continue to occur* on or after its date of  
 20 enactment on May 11, 2016." *Alta Devices, Inc. v. LG Elecs., Inc.*, 343 F. Supp. 3d 868, 877  
 21 (N.D. Cal. 2018) (emphasis added, citations and quotations omitted). Here, many patent filings,  
 22 each a separate and independent act of misappropriation, occurred after May 11, 2016, (FAC  
 23

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24 <sup>14</sup> Jinhua argues that Micron fails to sufficiently plead damages, because it does not allege a  
 25 "concrete financial loss," but in fact it does, by claiming patent filings, "economic damage," and  
 26 "actual damages in an amount to be proven at trial." (FAC ¶¶ 61, 62, 92-95, 112, 117, 126, 134,  
 27 141, Prayer for Relief). The cases Jinhua cites for this proposition are inapposite. Micron is not  
 28 pleading an intangible, abstract injury based solely on the loss of exclusive control of its trade  
 secrets, with no provable damages as in *Mattel, Inc. v. MGA Ent't Inc.*, 782 F. Supp. 2d 911, 1020-  
 21 (C.D. Cal. 2010). In fact, *Mattel* is a summary judgment opinion, which is not relevant to a  
 Rule 12(b)(6) motion. Nor is the loss Micron claims attenuated from Jinhua's conduct, as in  
*Pillsbury, Madison & Sutro v. Lerner*, 31 F.3d 924, 929 (9th Cir. 1994), because Jinhua directly  
 caused injury by filing patents that disclosed trade secrets resulting in harm to Micron.

¶ 95), but even if they were considered a continuation of a misappropriation from before May 11, 2016, the DTSA would still apply. *Alta Devices*, 343 F. Supp. 3d at 877. Jinhua also cannot escape application of the CUTSA by claiming its actions occurred only outside California. (Motion at 15.) They did not. (See, e.g., FAC ¶¶ 80-84 (alleging that Jinhua representatives travelled to this district to recruit employees and entered into business contracts relying on Micron’s technology).) Moreover, Jinhua’s actions caused harm in California (FAC ¶ 62). See *Applied Materials, Inc. v. Advanced Micro-Fabrication Equip., Inc.*, No. C 07-05248 JW, 2008 WL 11398913, at \*6 (N.D. Cal. Feb. 29, 2008) (finding plaintiff stated a claim where alleged that defendants “misappropriated its trade secrets and caused injurious effects in California”).

Finally, Jinhua’s reliance on *Destfino* to argue that Micron did not satisfy Rule 8 by incorporating allegations is misplaced. The *Destfino* case involved the heightened pleading standard for fraud (unlike here), and the complaint did not distinguish between 40 defendants, lumping all together for each and every allegation, and incorporating every preceding paragraph by reference. *Destfino v. Kennedy*, No. CVF081269LJODLB, 2009 WL 63566, at \*1, 5 (E.D. Cal. Jan. 8, 2009), aff’d sub nom *Destfino v. Reiswig*, 630 F.3d 952 (9th Cir. 2011). Here, unlike in *Destino*, Micron meticulously specifies for each allegation whether it applies to UMC, Jinhua or both, and it does not incorporate every preceding paragraph by reference for each cause of action. While Micron does incorporate most allegations into the causes of action, it does so because it “promotes simple, concise pleadings.” *Id.* at \*4 (citing *Fontana v. Haskin*, 262 F.3d 871, 877 (9th Cir. 2001)). For the same reasons as *Destino*, UMC’s citation of *S.E.C. v. Fraser*, No. CV-09-00443-PHX-GMS, 2010 WL 5776401, at \*9 (D. Ariz. Jan. 28, 2010), is misplaced.

## **V. JINHUA FAILED TO SATISFY THE HIGH BURDEN FOR DISMISSAL BASED ON FORUM NON CONVENIENS**

The burden is extremely high for forum non conveniens, and Jinhua has not met it. “A party moving to dismiss based on forum non conveniens bears the burden of showing (1) that there is an adequate alternative forum, and (2) that the balance of private and public interest factors favors dismissal.” *Dole*, 303 F.3d 1104 at 1118. “The plaintiff’s choice of forum will not be disturbed *unless* the ‘private interest’ and ‘public interest’ factors *strongly favor* trial in the foreign

1 country.” *Id.* (emphasis added). “Forum non conveniens is ‘an exceptional tool *to be employed*  
 2 *sparingly*, [not a] ... doctrine that compels plaintiffs to choose the optimal forum for their claim.’”  
 3 *Id.* (emphasis added) (citations omitted). Here, Jinhua has not demonstrated that Taiwan is an  
 4 adequate forum, and Jinhua has not shown that the balance of factors favor dismissal.

5       **A.     Taiwan Is Not an Adequate Forum.**

6           Jinhua failed to meet its burden that Taiwan is an adequate alternative forum. *Dole*, 303  
 7 F.3d at 1118. A foreign forum is adequate when it has personal jurisdiction over all defendants  
 8 *and* “provides the plaintiff with a sufficient remedy for his wrong.” *Id.* Here, Jinhua claims that a  
 9 Taiwanese court will have jurisdiction over it under Taiwan’s Code of Criminal Procedure; yet this  
 10 is a civil case. (Dkt. 168-2 ¶ 6.) Jinhua’s claim that Taiwan would have jurisdiction is groundless.  
 11 (Chen Decl. ¶ 7.) Further, Jinhua makes only conclusory assertions that Taiwan is an adequate  
 12 forum based on other cases, but “[t]he court makes the determination of adequacy on a case-by-  
 13 case basis.” *Nibirutech Ltd v. Jang*, 75 F. Supp. 3d 1076, 1082 (N.D. Cal. 2014). Jinhua ignores  
 14 the lack of discovery procedures, the unavailability of an equivalent to RICO claims in Taiwan,  
 15 the lesser remedies for trade secret misappropriation matters, the inability to force defendants  
 16 (even Taiwanese defendants) to produce evidence, the inability to compel Jinhua’s attendance at  
 17 trial in Taiwan, and the lack of ability to enforce judgment against Jinhua. (Chen Decl. ¶¶ 6, 9, 13-  
 18 16.) Jinhua also is not a party to any lawsuit in Taiwan, but is in this District. Because Jinhua has  
 19 not established that a Taiwanese court will have personal jurisdiction over it, that Taiwan “offers a  
 20 satisfactory remedy[,] and that [it] can be bound by a judgment issued there,” it has not met its  
 21 burden. *See Nibirutech Ltd*, 75 F. Supp. 3d at 1086 (denying dismissal due to inadequacy of  
 22 China as forum, even with Chinese company).

23       **B.     Private / Public Interest Factors Weigh Strongly Against Dismissal.**

24           Even if the Court finds Taiwan to be an adequate forum, the balance of private and public  
 25 interest factors must still *strongly favor* trial in a foreign country for the Court to grant dismissal.  
 26 *Dole*, 303 F.3d at 1118. The factors here favor proceeding in this District.

27           **Private Factors:** Courts address seven private interest factors, *Boston Telecomms. Grp., Inc. v. Wood*, 588 F.3d 1201, 1206–07 (9th Cir. 2009), which are addressed as follows:

1                   **(1) The residence of the parties and the witnesses.** Micron has a strong business  
 2 presence in this District. Micron’s President and CEO, its Executive Vice President and Chief  
 3 Business Officer, and the heads of three of the company’s four business units sit in Micron’s  
 4 Milpitas facility, along with roughly 450 Micron professionals (including engineering,  
 5 management, and executive positions). (FAC ¶ 62; Myers Decl. ¶ 4.) Moreover, Micron’s  
 6 business location in this District is of special relevance to this case and accounts for a large portion  
 7 of Micron’s sales: the Compute & Networking Business Unit (“CNBU”) and the Mobile Business  
 8 Unit (“MBU”) are responsible, among other things, for Micron’s DRAM products for PCs and  
 9 mobile devices, respectively. (Myers Decl. ¶ 4.) These units account for about 64% of the  
 10 company’s net sales in Fiscal Year 2017 in this District. (*See id.*)

11                  Given Micron’s strong ties to this District, Jinhua is not correct that Micron’s choice of  
 12 forum is entitled to less deference simply because its headquarters are in Boise, Idaho. *See Rare*  
 13 *Breed Distilling v. Heaven Hill Distilleries*, No. C-09-04728 EDL, 2010 WL 335658, at \*3 (N.D.  
 14 Cal. Jan. 22, 2010) (finding this District proper, even though plaintiff headquartered in Kentucky,  
 15 because plaintiff had a presence in this District that performed functions related to issues in the  
 16 case, and plaintiff’s President worked in San Francisco). Not only does Micron have a business  
 17 presence in this District, but the leadership of its core business, and business units central to this  
 18 case—responsible for a majority of Micron’s sales—is here. (*See* FAC ¶ 62; Myers Decl. ¶ 4.)

19                  Additionally, Defendant UMC has significant sales in this District, as its *wholly-owned*  
 20 subsidiary is located here, and UMC has reported annual inter-party sales into its subsidiary of  
 21 approximately \$1.8 billion. (FAC ¶ 11.) Moreover, UMC recently reported that 43% of its  
 22 foundry sales were in North America with most of those sales from the United States, and UMC is  
 23 traded on the New York Stock Exchange. (*Id.*)

24                  Micron anticipates relying on upwards of 50 witnesses residing in this District or nearby,  
 25 including: (i) its technical expert, Dr. David Liu, in this District; (ii) its damages expert, Alan Cox,  
 26 in this District; (iii) forensic experts in California; (iv) ten company witnesses who live in this  
 27 District or nearby in Idaho; (v) six Jinhua job applicants in this District; (v) UMC’s technical  
 28 expert, John Berg, in this District. (Dkts. 162-6, 181-2; FAC ¶ 80; Clark Decl. ¶¶ 4-6, Ex. 2.)

1 Moreover, several nonparty companies with witnesses and evidence reside in this District,  
 2 including CASPA, Google, LLC, Applied Materials, KLA, and Lam. (FAC ¶ 38, 47; *U.S.A. v.*  
 3 *United Microelectronics Corp., et al.*, Case No. 5:18-cv-06643 (“U.S. Civil Action”) Dkt. 1 ¶ 24.)  
 4 Micron is aware of at least another 28 individual witnesses from the nonparty companies, from  
 5 whom Micron will likely seek discovery and/or testimony. (Clark Decl. ¶¶ 8-10, Exs. 4-6.)  
 6 Moreover, Jinhua employed patent agents in California for filing some of the 117 UMC/Jinhua  
 7 Patent Filings, who may be witnesses. (FAC ¶ 96.)

8 The fact that witnesses employed by Jinhua and UMC reside in China and Taiwan does not  
 9 outweigh Micron’s choice of forum. *See, e.g., Perfect 10, Inc. v. RapidShare AG*, No. 09-CV-  
 10 2596 H (WMC), 2010 WL 11508846, at \*6 (S.D. Cal. May 12, 2010) (finding that private interest  
 11 factors weighed against dismissal where party witnesses were “located in California, Switzerland,  
 12 Germany, and elsewhere,” reasoning that witnesses would have to travel between Europe and the  
 13 U.S. regardless of the forum). This factor favors Micron.

14 **(2) The forum’s convenience to the litigants.** Courts also find a strong presumption in  
 15 favor of plaintiffs on this factor, *Boston Telecomms.*, 588 F.3d at 1206, and Micron’s bringing suit  
 16 in this forum comports with UMC’s prior statement favoring this District as a forum. UMC  
 17 declared in another matter under penalty of perjury that: “A trial in Northern California would be  
 18 significantly more convenient for UMC Taiwan’s potentially relevant employees,” because of the  
 19 proximity of this District to Taiwan and that “employees could work at UMC USA’s offices in  
 20 Sunnyvale, California if required to travel to Northern California in connection with [the] lawsuit.”  
 21 (Myers Decl. ¶ 5.) Further, the Northern District of California has international airports and easier  
 22 access for defendants than Boise, Idaho. *See Rare Breed Distilling* 2010 WL 335658, at \*8.

23 Moreover, this forum is convenient because Jinhua has appeared before this Court in  
 24 *U.S.A. v United Microelectronics Corp., et al.*, Case No. 3:18-cr-00465 (“U.S. Criminal Action”),  
 25 and has another pending case in this Court—the U.S. Civil Action. Those two actions closely  
 26 relate to this case. As such, witnesses and evidence will be here. This factor favors Micron.

27 **(3) Access to physical evidence and other sources of proof.** As Jinhua acknowledges,  
 28 much of the evidence is already in the United States—from technical details about Micron’s

1 technology, to the measures the company took to protect its secrets, to the forensic evidence of  
 2 UMC's misappropriation, to the economic damage that UMC's and Jinhua's misconduct has  
 3 caused. (Dkt. 168 at 20:21-25; Myers Decl. ¶ 6.) In fact, much of the technical documents already  
 4 reside with Dr. Liu in this District; much of the forensic evidence would be in the possession of  
 5 James Whitely, a Micron employee residing in this District; and much of the forensic evidence is  
 6 also with experts in California. (See Dkts. Dkt. 75-107, 116-23; Clark Decl. ¶¶ 5, 7.) That some  
 7 evidence is in Boise, Idaho rather than California nevertheless weighs in favor of this forum as it is  
 8 easier to bring this evidence to California than to Taiwan, especially with Micron's large presence  
 9 here. Moreover, much of the physical evidence located outside this District will likely already be  
 10 here, as the U.S. Criminal Action and U.S. Civil Action are before this Court, and the government  
 11 collected volumes of materials before those actions commenced. Even if evidence is not in this  
 12 District, in this digital age, evidence can be easily accessed here. *See Sarinana v. DS Waters of*  
 13 *Am., Inc.*, No. C-13-0905 EMC, 2013 WL 3456687, at \*2 (N.D. Cal. July 9, 2013) (finding access  
 14 to evidence neutral, noting the availability of digital records). Finally, contrary to Jinhua's claims,  
 15 Taiwanese courts cannot mandate the transfer of evidence from China to Taiwan. (Chen Decl.  
 16 ¶¶ 3, 6, 8, 9) (explaining that Taiwan may request China for evidence, but cannot compel it). This  
 17 factor favors Micron.

18       **(4) Whether unwilling witnesses can be compelled to testify.** Due to the U.S. Criminal  
 19 Action and U.S. Civil Action before this Court, Micron expects that many, if not most, witnesses  
 20 will be available to testify in this District. To the extent a party witness is unwilling to testify,  
 21 moving this case to Taiwan would not resolve the issue, as Taiwan cannot compel a witness from  
 22 China to testify in a civil trial. (Chen Decl. ¶¶ 3, 6, 8, 9); *see Manu Int'l., S.A. v. Avon Prods, Inc.*,  
 23 641 F.2d 62, 67 (2d Cir. 1981) (the unavailability of compulsory process over witnesses weighed  
 24 against Taiwan trial). Jinhua's argument that Taiwan's criminal rules permit its courts to exercise  
 25 jurisdiction over foreign defendants does not solve this problem. (See Dkt. 168-2 ¶ 6). Nor can  
 26 Jinhua claim that consenting to jurisdiction in Taiwan means that all witnesses will agree to appear  
 27 there. In fact, in recent trade secret cases where the Taiwanese MOJ has made official requests to  
 28 Chinese agencies for judicial assistance, it has *never* received any responses from those Chinese

1 agencies. (Chen Decl. ¶ 8.) This factor favors Micron.

2       **(5) The cost of bringing witnesses to trial.** The costs for bringing witnesses to trial  
 3 would be neutral, because: (i) the Court needs to offset Micron’s costs for sending potentially  
 4 dozens of witnesses / experts to Taiwan, *see Mintel Learning Tech., Inc. v. Beijing Kaidi Educ. &*  
 5 *Tech. Development Co., LTD.*, No. C 06-7541 PJH, 2007 WL 2403395, at \*10 (N.D. Cal. Aug. 20,  
 6 2007); and (ii) if timed correctly, witnesses brought here for the parallel proceedings could defray  
 7 costs. As stated above, there are 50 plus witnesses in this District or nearby. (*Supra* Private  
 8 Factor (1).) Moreover, Defendant UMC has a wholly-owned subsidiary in this District where its  
 9 employees can work if they come here to testify, defraying costs. (Myers Decl. ¶ 5.)

10       **(6) The enforceability of the judgment.** Jinhua offers no explanation for why a judgment  
   11 against it could be enforced by a Taiwanese, but not a U.S., court. Contrary to Jinhua’s statement  
   12 made under penalty of perjury, Jinhua has extensive assets in the U.S., including at least 132  
   13 patents or pending patent applications (Dkt. 162-5 ¶ 5). *See In re Cybernetic Servs., Inc.*, 252 F.3d  
   14 1039, 1044 (9th Cir. 2009) (noting that patent was debtor’s “primary asset”). Article 9 of the  
   15 Uniform Commercial Code permits liens on patents. *See id.* at 1045-46. Therefore, this Court can  
   16 easily enforce judgment on Jinhua’s 132 patent assets. This Court also can enforce a judgment  
   17 against Jinhua’s co-defendant, UMC, with inter-party U.S. sales through UMC Group (USA) of  
   18 approximately \$1.8 billion. (FAC ¶ 11); *Cooper v. Tokyo Elec. Power Co.*, 166 F. Supp. 3d 1103,  
   19 1135 (S.D. Cal. 2015), aff’d, 860 F.3d 1193 (9th Cir. 2017) (denying motion to dismiss for forum  
   20 non conveniens, finding enforceability factor neutral where defendant was from Tokyo but had  
   21 “significant assets” in the U.S.). A Taiwanese court, however, can only enforce a judgment  
   22 against Jinhua if it has assets in Taiwan. (Chen Decl. ¶ 13.) Jinhua does not claim to have assets  
   23 in Taiwan, but even if it did, Micron could enforce judgments against Jinhua’s assets there. (*Id.*  
   24 ¶¶ 13-14.) Conversely, it is questionable whether a Taiwanese judgment could be enforced against  
   25 Jinhua in China. (Chen Decl. ¶ 13.) This factor favors Micron.

26       **(7) All other practical problems that make trial of a case easy, expeditious and  
   27 inexpensive.** Micron’s claims arise under U.S. and California law, namely the DTSA, CUTSA,  
   28 and RICO. A U.S. trial will be more efficient than a forum unfamiliar with U.S. law. *See, e.g.*,

1       *CYBERsitter, LLC v. People's Republic of China*, No. CV 10-38-JST SHX, 2010 WL 4909958, at  
 2       \*8 (C.D. Cal. Nov. 18, 2010) (denying motion to dismiss for forum non conveniens even though  
 3       only four of seven claims relied on California and federal law); *Condos v. Condos*, No. CV 04-  
 4       07365 DT (SHx), 2006 WL 8431432, at \*4 (C.D. Cal. Feb. 9, 2006) (reasoning that “where  
 5       questions of California law predominate, the Court is disinclined to dismiss the case simply  
 6       because certain questions of Greek law may arise”). Moreover, Taiwan does not have an  
 7       equivalent law to RICO. (Chen Decl. ¶ 15.) This factor favors Micron.

8              **Public Interest Factors:** Courts address five public interest factors, *Boston Telecomms.*,  
 9       588 F.3d at 1211, which are addressed as follows:

10             **(1) The local interest in the lawsuit.** Both California and the U.S. have a strong interest  
 11       in this lawsuit.<sup>15</sup> (Clark Decl. Ex. 7.) First, Micron has a large local presence. Micron, a multi-  
 12       billion dollar company, has two DRAM-related business units located in Milpitas, one accounting  
 13       for roughly 42 percent of the local net sales in Fiscal Year 2017, and the other accounting for 22  
 14       percent. (Myers Decl. ¶ 4.) Second, Micron brings a claim under the CUTSA, and California has  
 15       “a significant interest in protecting the intellectual property of its citizens and business from  
 16       infringement by foreign defendants.” *Mintel Learning Tech., Inc.*, 2007 WL 2403395, at \*11.

17             As for the U.S., it too has a big interest in this case. The government issued a press release,  
 18       memorializing its interest to bring justice for UMC’s and Jinhua’s trade secret theft. (Clark Decl.  
 19       Ex. 1.) Former Attorney General Jeff Sessions recognized the importance of this case as it  
 20       pertained to combatting Chinese economic espionage.<sup>16</sup> Moreover, legislative history of the  
 21       DTSA leaves no doubt that Congress views cases under the DTSA as an imperative public interest  
 22       to provide U.S. technology companies a federal, private right of action to defend against  
 23       misappropriation taking place abroad. Explaining the rationale, Congress recognized the necessity  
 24       for the DTSA to “mak[e] whole the victims of misappropriation.” H.R. Rep. No. 114-529 at 3-4.

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25       <sup>15</sup> Jinhua claims Taiwan has a greater interest in this dispute, in part due to the breach of employee  
 26       agreements in Taiwan. (Motion at 22:22-24.) Since there is no breach of contract issue in this  
 27       case, however, that argument is irrelevant.

28       <sup>16</sup> U.S. Dept. Justice, “Attorney General Jeff Sessions Announces New Initiative to Combat  
 29       Chinese Economic Espionage,” (Nov. 1, 2018) available at  
<https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-announces-new-initiative-combat-chinese-economic-espionage>.

1 In short, Congress enacted the DTSA to promote the national interest in enlisting civil  
 2 enforcement against foreign violators of trade secret laws. Congress additionally mandated that  
 3 “[t]his bill will equip companies with the additional tools they need to protect their proprietary  
 4 information. . . . As trade secret owners increasingly face threats from both at home and  
 5 abroad. . . . [And] protect their intellectual property and ensures continued growth and innovation  
 6 in the American economy.” H.R. Rep. No. 114-529 at 6. Congress enacted the DTSA because it  
 7 was necessary to provide U.S. businesses with a forum to obtain protection and redress of their  
 8 trade secrets misappropriated abroad. That there may, in theory, be some alternative forum where  
 9 Micron could attempt to assert its rights does nothing to alter Micron’s interest—and the national  
 10 interest—in having its claims adjudicated here. This factor strongly favors Micron.

11       **(2) The court's familiarity with the governing law.** As stated above, this lawsuit is  
 12 brought exclusively under California and U.S. law: the CUTSA, DTSA, and RICO. Taiwanese  
 13 courts do not have familiarity with these laws.<sup>17</sup> This factor favors Micron.

14       **(3) The burden on local courts and juries.** The burden on the courts will likely be the  
 15 same for both U.S. and Taiwanese courts. Regardless of forum—U.S. or Taiwan—there will  
 16 likely be extensive translations of testimony between the two languages. *See CYBERsitter, LLC*,  
 17 2010 WL 4909958, at \*8. This factor is likely neutral.

18       **(4) Congestion in the court.** “Congestion . . . is afforded little weight in assessing the  
 19 public interest factors.” *In re Air Crash Over Taiwan Straits on May 25, 2002*, 331 F. Supp. 2d  
 20 1176, 1203 (C.D. Cal. 2004); *see Gates Learjet*, 743 F.2d at 1337 (finding it “unfair for a court to  
 21 subject a United States corporation to the courts of another country merely because plaintiff’s  
 22 home country courts are congested.”) Here, as in *In re Air Crash* “it is difficult to ascertain

23       <sup>17</sup> Jinhua claims that Taiwanese law should govern based on employment agreements not raised in  
 24 this action. These employment agreements have no bearing on this case, because the employee-  
 25 signatories are not parties to the action and this case does not include third party beneficiaries to  
 26 the contracts, or parties with extremely close ties to a signatory. *See, e.g., Manetti-Farrow, Inc. v.*  
*Gucci America, Inc.*, 858 F.2d 509, 511, 514 n.5 (9th Cir. 1988); *Ultratech, Inc. v. Ensure*  
*NanoTech (Beijing), Inc.*, 108 F. Supp. 3d 816, 822 (N.D. Cal. 2015). Moreover, the forum  
 27 selection clause in these agreements was permissive, not mandatory, meaning the parties did not  
 agree to be bound to jurisdiction in Taiwan. *See Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817  
 28 F.2d 75, 77 (9th Cir. 1987). Courts have found that the exact language at issue here—“agree to be  
 subject to”—is permissive. *Basic Fun, Inc. v. POP Mktg. Grp., Inc.*, No. CIV.A. 06-1129, 2006  
 WL 1648982, at \*1 (E.D. Pa. June 12, 2006); *Wood v. World Wide Ass’n of Specialty Progs. &*  
*Sch., Inc.*, No. 2:06-CV-708 TS, 2007 WL 2821768, at \*1-2 (D. Utah Sept. 27, 2007).

1 whether retention of the actions in the United States or transfer to Taiwan would result in a more  
 2 expeditious resolution of plaintiffs' claims." 331 F. Supp. 2d at 1203. Regardless, Taiwan delays  
 3 are real, including congestion due to high workload of the judges, (Chen Decl. ¶ 11), a time frame  
 4 of five years to go through all three Taiwanese courts, (*id.* ¶ 10), and time for obtaining visas for  
 5 Jinhua witnesses going to Taiwan, (*id.* ¶ 12). This factor favors Micron or is neutral.

6         **(5) The costs of resolving a dispute unrelated to a particular forum.** This factor is not  
 7 applicable, because the dispute is related to this forum, with Jinhua's actions targeting Micron in  
 8 in this District, and patent filings targeting the U.S., not Taiwan. This factor is likely neutral.

9                 Overall, the factors strongly weigh in Micron's favor. Because dismissal would only be  
 10 appropriate if these factors weighed "strongly" in favor of Jinhua, the Court must deny Jinhua's  
 11 motion to dismiss on forum non conveniens. *See Dole*, 303 F.3d at 1118.

12         **VI. CONCLUSION**

13                 Jinhua disregards that at least eleven of its 117 UMC/Jinhua Patent Filings use and disclose  
 14 Micron's trade secrets, constituting separate acts of misappropriation in the U.S. and purposefully  
 15 availing itself in the U.S. Micron's claims for trade secret misappropriation arose from these  
 16 patent filings, as well as from Jinhua's recruiting and vendor visits in this District. Jinhua failed to  
 17 demonstrate that this District is unreasonable, or that the forum is inconvenient. Jurisdiction and  
 18 forum are proper. Finally, Micron demonstrated that it sufficiently pled all facts for its claims, but  
 19 if the Court believes otherwise, Micron requests leave to amend its FAC to remedy any  
 20 deficiencies. Jinhua's Motion to Dismiss for Lack of Personal Jurisdiction, Failure to State a  
 21 Claim and Forum Non Conveniens should therefore be denied.

22                 Dated: March 28, 2019

JONES DAY

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By: s/ Randall E. Kay  
 Randall E. Kay

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